



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E558 OF 2020

KENYA CONCRETE, STRUCTURAL, CERAMICS, TILES

WODDPLYS AND INTERIOR DESIGN

WORKERS UNION.....CLAIMANT/RESPONDENT

VERSUS

COMPLY INDUSTRIES LIMITED.....RESPONDENT

AND

KENYA BUILDING CONSTRUCTION

TIMBER & FURNITURE EMPLOYEES UNION.....INTERESTED PARTY

RULING

1. The notice of motion application dated 21/9/2020 seeks for an order in the following terms inter alia:-

1. Spent

2. Spent

3. Spent

4. Spent

5. That this application and the main suite be merged and proceed by way of documentation as provided for under Rule 21 of the Employment, and Labour Relations Court Procedure Rules, 2016.

2. The application is premised on grounds set out on the Notice of Motion marked 1 to 34 and in the supporting affidavit of Dishon Angoya for the Applicant Union.

3. Prayers 1 to 3 were granted ex parte by Radido, J. and on the return date on 18/11/2020, the Court granted prayer 4 the respondent having not filed any replying affidavit.

4. Prayers 1 to 4 having been spent the only prayer still alive is prayer 5 which seeks to dispense with the application and the parties to prosecute the main suit to deal with the substantive orders raised therein.

5 The Interested Party filed a replying affidavit dated 18/11/2020 and the respondent filed a replying affidavit pursuant to leave granted on 18/4/2020.

6. The Court has considered the deposition by the parties and the written submissions filed and find no impediment at all to the prayer by the applicant that the parties proceed to deal with the main suit so as to address the only outstanding substantive issues raised therein.

7. Indeed there is no prayer left in the application to address except that of allowing the wish of the *dominis litis*, the Claimant/Applicant to be allowed to prosecute the main suit.

8. Indeed, on 18/11/2020, the Court had already pre-empted the hearing of the application by granting prayer 4 thereof pending the hearing and determination of the main suit.

9. Accordingly, the Court grants prayer 5 of the application and makes the following Orders:-

- (a) Status quo at the work place be maintained on matters raised in this suit pending the hearing and determination of the suit.
- (b) Parties to conclude filing of pleadings and obtain a mention date for pre-trial proceedings.
- (c) Costs in the cause.

Dated and delivered at Nairobi this 24th day of February, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Angoya for Claimant

Mr. Masese for Respondent

Mr. Murage for Interested party

Ekale – Court clerk.